OPEN MEETING ITEM





ARIZONA CORPORATION COMMISSION

ORIGINAL



DATE: SEPTEMBER 27, 2016

DOCKET NO.: S-20896A-13-0378

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BRIAN C. HAGEMAN, DELUGE INC., AND HYDROTHERM POWER CORPORATION
(SECURITIES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and nine (9) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 6, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 27, 2016 AND OCTOBER 28, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI A. JERICH
EXECUTIVE DIRECTOR

On this 27th day of September, 2016, the following document was filed with Docket Control as a Recommended Opinion & Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

Brian Hageman
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Surprise, AZ 85378

Matt Neubert, Director
Securities Division
ARIZONA CORPORATION COMMISSION
1300 West Washington Street
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By: RTallman
Rebecca Tallman
Assistant to Marc E. Stern

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

| | |
|---|---|
| In the matter of: | DOCKET NO. S-20896A-13-0378 |
| BRIAN C. HAGEMAN, an unmarried man, | DECISION NO. _____ |
| DELUGE, INC., a dissolved Delaware corporation, | |
| HYDROTHERM POWER CORPORATION, a dissolved Delaware corporation, | |
| Respondents. | **OPINION AND ORDER** |

| | |
|---|---|
| DATE OF PRE-HEARING CONFERENCE: | December 10, 2013 |
| DATE OF PROCEDURAL CONFERENCE: | April 14, 2014 |
| DATES OF HEARING: | July 14 and 15, 2014 |
| PLACE OF HEARING: | Phoenix, Arizona |
| ADMINISTRATIVE LAW JUDGE: | Marc E. Stern |
| APPEARANCES: | Mr. Brian C. Hageman, pro per; and<br>Ms. Wendy Coy, Staff Attorney on behalf of Securities Division of the Corporation Commission. |

**BY THE COMMISSION:**

On November 5, 2013, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Brian C. Hageman, Deluge, Inc. ("Deluge") and Hydrotherm Power Corporation ("Hydrotherm") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of stock and/or investment contracts.[1]

Respondent Hageman was duly served with a copy of the Notice.

[1] Both Deluge and Hydrotherm are dissolved Delaware corporations.

On November 12, 2013, Respondent Hageman filed a request for hearing in response to the Notice in this matter pursuant to A.R.S §44-1972 and A.A.C. R14-4-306.

On November 15, 2013, by Procedural Order, a pre-hearing conference was scheduled on December 10, 2013.

On December 10, 2013, at the pre-hearing conference, the Division appeared through counsel and Respondent appeared on his own behalf. Counsel for the Division requested that a hearing be scheduled for approximately one week. Respondent had no objections to this request.

On December 11, 2013, by Procedural Order, a hearing was scheduled to commence on April 14, 2014.

On March 20, 2014, Respondent Hageman filed a Request for Continuance ("Request") which stated that the "Respondents request a continuance in order to secure legal counsel."

On March 24, 2014, the Division filed a Response to Request for Continuance objecting to Respondent's Request.

On April 3, 2014, by Procedural Order, the hearing was vacated and a procedural conference scheduled on April 14, 2014, in place of the hearing.

On April 14, 2014, at the procedural conference, the Division appeared through counsel and Respondent Hageman appeared on his own behalf. Mr. Hageman reiterated that he was seeking counsel and that he would be speaking with the Division's counsel about a resolution of the issues raised by the Notice. The parties further discussed the rescheduling of the hearing. Subsequently, by Procedural Order, the hearing was continued to July 14, 2014.

On June 23, 2014, Respondent Hageman filed a Request in which he restated that he was requesting a six month continuance in order to retain counsel. This request followed his demand for a continuance on March 20, 2014, which was granted when the hearing scheduled for April 14, 2014 was continued to July 14, 2014.

On June 24, 2014, the Division filed a response to the second Request by Respondent Hageman. Therein, the Division cited A.A.C. R14-3-109(Q) that states a hearing may be continued "on a showing of good cause." The Division argued that Respondent had sufficient time to prepare for a hearing including time to retain counsel. The Division further stated that copies of its proposed exhibits to be

introduced at hearing and the names of prospective witnesses had previously been provided to Respondent Hageman. Subsequently, by Procedural Order, it was found that the Respondent had failed to establish good cause for a further continuance, and Respondent Brian Hageman's second Request was denied.

On June 30, 2014, the Division filed a Motion for Telephonic Testimony ("Motion") citing the difficulty for a Wyoming resident who was an investor to appear at the scheduled hearing in Phoenix.

There were no objections to the Motion filed by the Division.

On July 7, 2014, by Procedural Order, the Division's Motion was granted.

On July 14, 2014, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division appeared with counsel. Respondent appeared on his own behalf. At the conclusion of the proceeding, the matter was taken under advisement pending the submission of a Recommended Opinion and Order to the Commission.

On September 4, 2014, Respondent, Brian C. Hageman, filed his closing brief.

On September 5, 2014, the Division filed its closing brief.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

## FINDINGS OF FACT

1. Respondent, Brian C. Hageman, beginning in 1998, conducted business within or from Arizona on behalf of Deluge and Hydrotherm.

2. Respondent Hageman has not been registered with the Commission as either a securities salesman or dealer. (Ex. S-1)

3. Deluge was a Delaware Corporation which was incorporated in Delaware on November 14, 1996, and subsequently dissolved by the Delaware Division of Corporations on March 1, 2010. (Ex. S-4)(Tr. 94:7-20)

4. During Respondent Hageman's Examination Under Oath ("EUO"), he disclosed that Deluge had been conducting business within or from Arizona since approximately 1998. (Ex. S-16)

5. According to Commission Records, Deluge had been authorized to transact business in

Arizona, but it was issued a Certificate of Revocation on February 18, 2010, because of a failure to file its Annual Report. (Ex. S-5a and S-5f)

6. Deluge has not been registered by the Commission as a dealer. (Ex. S-2)

7. According to a certified record from the State of Delaware, Hydrotherm was incorporated in the State of Delaware on November 15, 1995. (Ex. S-6)

8. According to the Division's investigation, Hydrotherm's corporate status in Delaware is void.

9. Hydrotherm applied for authority to conduct business in Arizona on December 5, 1995, which was subsequently granted. However, on April 16, 2009, its authority to conduct business in Arizona was revoked by the Commission for failure to file its Annual Report. (Ex. S-7)

10. Hydrotherm has not been registered by the Commission as a dealer. (Ex. S-3)

11. During Respondent Hageman's EUO, he stated that he was the Chief Executive Officer ("CEO") of both Deluge and Hydrotherm. (Ex. S-16)

12. The Division, in support of its allegations in the Notice called two investor witnesses, Mrs. Nita Killabrew and Mr. John Rhodes. Additionally, the Division called William Santee and Annalisa Weiss, Special Investigators with the Division, and Sean Callahan who worked at the Division as a forensic account.

**Mrs. Nita Killabrew**

13. Mrs. Nita Killabrew testified that she is a resident of Phoenix and became familiar with the Deluge and Hydrotherm offerings when she and her late husband, Harmon, were told about them by one of Mr. Hageman's employees, Dave Russell.[2] (Tr. 29:21-25)

14. Mrs. Killabrew and her husband were told that the Respondents were looking for investors. (Tr. 30:1-8)

15. To the best of Mrs. Killabrew's recollection, this introduction took place in approximately 1996 or 1997. (Tr. 30:11-13)

16. By way of introduction, Mrs. Killabrew stated that they were invited to view a "pump

[2] Mr. Killabrew was a former major league baseball player and a member of the Baseball Hall of Fame.

the size of a warehouse." (Tr. 30:18-24)

17. Mrs. Killabrew referenced a stock certificate issued by Deluge which was dated December 16, 1997, and stated that her initial conversation with Mr. Russell and Mr. Hageman took place prior to the date on the certificate. (Tr. 31:9-15)(Ex. S-27)

18. According to Mrs. Killabrew, neither Mr. Russell nor Mr. Hageman referenced any risks in the investment, but she recalled "a tremendous return" was promised when a public offering took place. (Tr. 31-32:24-20)

19. Mrs. Killabrew stated that Respondent Hageman did not state when the public offering was to take place, but recalled that they were told the technology required more refinement of the product and that more funding was needed to refine the technology and make the machine smaller. The Killabrews were also told that Respondents already had over 200 orders from India. (Tr. 32:11-17)

20. According to Mrs. Killabrew, the idea was that when the shares became available to the public, they would be worth more, and could be sold to future investors. Respondent Hageman wanted Mr. Killabrew to become a shareholder, but the Killabrews didn't have the funds to purchase any shares at the time. (Tr. 33:1-4)

21. Mrs. Killabrew stated that her husband, Harmon, had name value because he had been a well-known sports figure and could introduce others to the Respondents. In return, Mr. Killabrew was to be compensated with stock in exchange for meeting with people at various offerings to prospective investors. (Tr. 33:9-17)

22. Mrs. Killabrew further stated that Mr. Russell approached Mr. Killabrew's family, friends, and others about Deluge and Hydrotherm trying to get them to buy stock. These activities were not approved of by either Mr. Killabrew or Mrs. Killabrew. (Tr. 33-34:22-5)

23. According to Mrs. Killabrew, it was her understanding that invested funds would be utilized to develop "the technology" for the Respondents' pumps. (Tr. 34:7-18)

24. Mrs. Killabrew testified that initially her husband's name was to be used to promote the offering, and in return he was to receive shares of stock, but there was a delay in providing him with the shares. (Tr. 35:2-5)

25. At that time, Mrs. Killabrew believed that a public offering was to occur within weeks

for Deluge. (Tr. 35:7-14)

26. Ms. Killabrew testified that she and her husband first invested money on May 10, 2000, when Mr. Killabrew wrote a check payable to Mr. Hageman for $25,000 for 5,000 shares of Hydrotherm. (Tr. 36-37:21-24)

27. In December 1997, Mr. Killabrew had been given a Deluge stock certificate which reflected his ownership of a half share of Deluge stock for the use of his name in promoting the company. (Tr. 38:4-7)(Ex. S-27)

28. Mrs. Killabrew further testified that she and her husband subsequently invested another $12,500 in Deluge in January 2002 because the Killabrews had been told that the company was going public within 2 weeks, but needed more money. (Tr. 39-40)

29. Respondents promoted this sale of stock by representing that they had orders from all over the world, and Respondent Hageman stated during a telephone call that they were going public within a month. (Tr. 40-41:25-5)

30. In return for the $12,500 investment by the Killabrews, they were issued a Deluge stock certificate for 25,000 shares of its stock. (Ex. S-27)

31. Mrs. Killabrew stated that she and her husband received a letter dated February 28, 2005, signed by Respondent Hageman, which informed them that Hydrotherm was going to have a stock split in order to raise more money for their investment. (Tr. 43)(Ex. S-27)

32. Mrs. Killabrew confirmed that on March 31, 2005, she and her husband received a stock certificate from Hydrotherm which reflected their ownership of 50,000 shares of stock as a result of the stock split.[3] (Tr. 45:1-7)(Ex.S-27)

33. Mrs. Killabrew testified that in approximately 2006 her husband realized that the purported public stock offering would not take place and he demanded their money back from Respondent Hageman's associate, Mr. Dave Russell. (Tr. 45:17-23)

34. Subsequently, on or about June 6, 2008, Mr. Russell sold some of the shares of the Killabrews' Deluge stock for $50,000 to a new investor. (Tr. 46-47:16-7)(Ex. S-27)

[3] The stock split increased their holdings in Hydrotherm from 5,000 shares of stock to 50,000 shares of stock.

35. In order to complete the sale of the Killabrews' stock in Deluge, Mr. Killabrew sent their stock certificate for 25,000 shares to Deluge with a request that their shares be reissued for 10,000 shares to the purchaser of their stock and the other 15,000 shares were to be reissued to Mr. and Mrs. Killabrew. (Tr. 47:8-25)(Ex. S-27)

36. According to Mrs. Killabrew, friends of theirs who had invested with Deluge wanted their money back as well, but Respondents were unable to satisfy those demands because Respondents lacked the funds. However, their friends were promised a great return with dividends, but "it just never happened." (Tr. 49)

37. Mrs. Killabrew further stated that although she and her husband were experiencing financial problems as a family since 1997, Respondents did not inquire about their financial position or net worth at the time of their initial investment. (Tr. 50:11-18)

38. Testifying further, Mrs. Killabrew indicated that, although she and her husband received $50,000 after investing a total of $37,500, Mrs. Killabrew still holds15,000 shares of Deluge stock and 50,000 shares of Hydrotherm. (Tr. 52-53:23-17)

39. According to Mrs. Killabrew, Mr. Hageman told Mr. and Mrs. Killabrew during a tour of Respondents' facilities that he had over 200 orders from India and needed funding to develop the technology for the pumps further so they could be made more affordable to ship. (Tr. 59:12-16)

40. The Killabrews believed that they would receive dividends based on the sales of the products and they believed that the sales had already taken place. (Tr. 59:18-23)

**William Santee**

41. William Santee, a Special Investigator for the Division, testified that he became familiar with the Respondents after conducting an undercover telephone conversation with Respondent Hageman. (Tr. 65-66:19-23)

42. Mr. Santee stated that he made his initial contact with Respondent Hageman by sending him an email on March 14, 2012. (Tr. 67:6-9)(Ex. S-11)

43. During Mr. Santee's initial email contact with Respondent Hageman, he stated that he had "never invested before" and that he had just inherited some money and wanted to invest $100,000 in a new company. (Ex. S-11)

44. Mr. Santee further testified that he had contacted Mr. Hageman after reviewing the Deluge website and made contact using an undercover name of "Billy Matthews." (Tr. 69)

45. Shortly after Mr. Santee's initial email to Respondent Hageman, he received a return email asking for his phone number so that Respondent Hageman could contact him by phone. (Ex-11)

46. According to Mr. Santee, he responded to Mr. Hageman's email on March 16, 2012, and provided him with a phone number. (Ex. S-11)

47. After providing Respondent Hageman with a phone number, he subsequently received a subscription agreement and other informational documents. (Ex. S-7)

48. Mr. Santee stated that he received a copy of the Executive Summary which had been sent to him by Respondent Hageman which included information about what was termed the "natural energy engine" and included a subscription agreement which stated that Hydrotherm was a Delaware Corporation.[4] (Tr. 72:3-20)(Ex. S-13)

49. Under the terms of Hydrotherm's subscription agreement, it was disclosed that an offering was being made pursuant to the Securities Act of 1933 and informed prospective investors that the securities would not be registered pursuant to the federal Securities Act in reliance upon an exemption under Rule 506 of Regulation D. (Ex. S-13)

50. Hydrotherm's subscription agreement also referenced the definitions applicable to what is termed an "accredited investor" and prospective investors were required to certify that they met the requirements of the specific investor categories. (Ex.S-13)

51. Mr. Santee referred to a transcript of a taped conversation between Mr. Santee in his undercover capacity with Respondent Hageman. (Tr. 74)(Ex. S-12)

52. In the transcript, Respondent Hageman stated that the interpretation of an accredited investor had changed over the last "15 years" and was very loosely interpreted. (Tr. 75:7-12)

53. Mr. Santee stated that Respondent Hageman told him that it would be a risky investment for him. (Tr. 75:22-24)

54. Further testifying, Mr. Santee represented to Respondent Hageman that he was on some

[4] In March 2012, at the time Mr. Santee received the subscription agreement and other information, Hydrotherm had been dissolved as a Delaware corporation.

type of a disability during the conversation (Tr. 76:10-12)

55. Mr. Santee stated that Respondent Hageman said that Respondents were not required to verify any of Mr. Santee's information on the subscription agreement, but they were required to have a signed piece of paper in their file. (Tr. 77:2-6)

56. Mr. Santee was told by Respondent Hageman that a return on his investment might be slower than on other investments, and his investment would probably have a higher risk too. He was also told that, in return for his investment, he would receive a certificate for the stock which he would hold in Hydrotherm. (Tr. 78)

57. Mr. Santee further stated that Respondent Hageman represented that Respondents had raised over $14 million by selling stock in the Respondent companies. (Tr. 79:5-7)

58. Respondent Hageman told Mr. Santee that Hydrotherm was the parent company which held the patent for the engine that was being developed by Deluge, but Deluge's stock had been sold out and Mr. Hageman was now selling stock in Hydrotherm which owned the patent. (Tr. 79)

59. According to Mr. Santee, Mr. Hageman told him that, in 3 to 5 years, Mr. Santee would receive 100 percent of his investment back and after that his dividends would be going up. (Tr. 80:16-21)

60. During their conversation, Mr. Santee stated that Respondent Hageman told him that he had about 700 shareholders. (Tr. 81:1-5)

61. Based on the conversation between Respondent Hageman and Mr. Santee in his undercover capacity as "Billy Matthews", Respondent Hageman did not make any attempts to determine whether Mr. Santee/Billy Matthews was a serious investor and he did not disclose that neither Deluge nor Hydrotherm were no longer valid corporations in Delaware. (Tr. 82:3-9)

62. Additionally, Respondent Hageman failed to inform Mr. Santee about a number of lawsuits against himself and Deluge and Hydrotherm. Mr. Hageman also failed to inform him that judgments had been taken against him and Deluge and Hydrotherm. (Tr. 82:10-15)

63. Further, Mr. Santee stated that Respondent Hageman failed to inform him that none of his shareholders had ever received any return on their investments. (Tr. 82:20-23)

64. At no time during Respondent Hageman's conversations with Mr. Santee did he inform

the Division's investigator that investment funds would be used to pay him first and then the remaining money would go to the Respondent entities. (Tr. 83:9-13)

**Annalisa Weiss**

65. Ms. Annalisa Weiss was the primary Division investigator who investigated the Respondents' activities in the offer and sale of stock.

66. Ms. Weiss testified that, according to Commission records, Respondent Hageman was not registered as a salesman or dealer under the Act from 1995 through 2013. (Tr. 90:1-6)(Ex. S-2)

67. Ms. Weiss further testified that Deluge had not been registered as a dealer from 1995 through 2013, but in 1997 the Commission received a Form D Notice of an Offering named Private Offering No. 1 from Deluge. (Tr. 90:14-24)(Ex. S-2)

68. Ms. Weiss further testified on that July 14, 2000, a Form D was filed for Deluge dated June 1, 2000, for a private offering for 400,000 shares of its common stock. (Tr. 91:12-17)(Ex. S-2)

69. According to Ms. Weiss, certified records of the Commission indicate that Hydrotherm was not registered from 1995 to 2013 as a dealer. (Ex. S-3)

70. Ms. Weiss stated that Deluge's current corporate status in Delaware is void. (Tr. 94:18-20)

71. On April 8, 1997, according to certified Commission records, Deluge filed an Application for Authority to conduct business in Arizona as a Foreign Corporation. (Ex. S-5)

72. On February 18, 2010, the Commission issued a Certificate of Revocation to Deluge for failure to file its Annual Report.[5] (Ex.S-5f)

73. The Division further introduced into evidence certified copies of the Commission involving a number of lawsuits that had been filed against Deluge, and at the time service had been made through the Commission as an agent for Deluge, a foreign corporation. (Ex. S-5)

74. Further testifying, Ms. Weiss stated that, after Deluge had its authority to conduct business as a foreign corporation in Arizona revoked, there were no Commission records that Deluge reapplied to transact further business in Arizona. (Tr. 96:11-15)

[5] This document revoked Deluge's authority to transact business in Arizona as a foreign corporation.

75. Ms. Weiss testified that during her investigation she learned that Deluge had maintained a website. (Tr. 99:21-25)

76. Ms. Weiss stated that she found that the Deluge website contained information about investment opportunities and printed out a copy of the website. (Tr. 100)(Ex. S-8)

77. Ms. Weiss could not locate a website for Hydrotherm. (Tr. 100:10-12)

78. According to the Deluge website, Deluge could only work with accredited investors. (Ex. S-8)

79. On March 5, 2012, Ms. Weiss sent an email to Deluge and Respondent Hageman expressing an interest in an energy investment. Respondent Hageman thanked her for her interest and sought to verify whether she was an accredited investor and explained what that meant.[6] (Tr. 102:15-20)(Ex. S-9)

80. Ms. Weiss stated that in her undercover capacity, on March 6, 2012, in a series of emails to Deluge and Respondent Hageman, she stated that she was an accredited investor and wanted to invest $200,000. (Ex. S-9)

81. Ms. Weiss stated that during her email exchange with Respondent Hageman he provided her with a copy of an Executive Summary for Deluge, a set of frequently asked questions and also a subscription agreement for Hydrotherm. (Tr. 103:10-13)(Ex. S-9)

82. According to Ms. Weiss, she understood that if she purchased stock in Hydrotherm she would own an interest in the company that held the patents for the "Natural Energy Engine" which was being marketed by Deluge. (Tr. 104:9-18)

83. According to the Hydrotherm subscription agreement, it was incorporated in Delaware. However, in 2012, when Ms. Weiss was dealing with Respondent Hageman, this was not a true statement because Hydrotherm's corporate status in Delaware was void and its authority to do business in Arizona had been revoked in 2009.

84. The Hydrotherm subscription agreement required Ms. Weiss to certify that she was an accredited investor by either having a net worth of $1,000,000 or $200,000 in annual income. (Ex. S-

[6] During the course of the Division's investigation of the Respondents, Ms. Weiss used the undercover idtentity of Margo Mallamo and exchanged a series of emails with Respondent Hageman in March 2012. (Ex. S-9 and Ex. S-10)

9)

85. The signature page of the Hydrotherm subscription agreement indicated a purchase price for the stock of $5 per share. (Ex. S-9)

86. During Ms. Weiss' exchange of emails with Respondent Hageman, she told him that she had another person interested in investing.[7] She said the prospective investor was not an accredited investor, and Respondent Hageman had responded that people could invest if they had some degree of sophistication with investments such as business owners, realtors, bankers, stock brokers and other people with management skills. (Tr. 107-108:21-17)(Ex. S-10)

87. On March 19, 2012, Ms. Weiss emailed Respondent Hageman again inquiring how her investment funds would be used and what would be her expected rate of return. (Tr. 109:5-7)(Ex. S-10)

88. Respondent Hageman replied by email to Ms. Weiss and informed her that invested funds would be used for administrative costs, but that a full return on the investment should be generated within several years with a 10 to 15 percent rate of return for investors. (Tr. 109:6-23)(Ex. S-10)

89. Ms. Weiss stated that, although Respondent Hageman told her that any investment would involve a certain amount of risk, she would be investing after many years of research and development. (Tr. 110:2-6)

90. Further testifying, Ms. Weiss stated that during her investigation, she did not speak personally with Respondent Hageman, but dealt with him strictly by exchanging emails with him. (Tr. 111:7-12)(Ex. S-9)(Ex. S-10)

91. Ms. Weiss testified that during the course of the investigation another Division investigator, Doug Barrett, contacted Respondent Hageman by means of the Deluge website in June 2013 and began emailing him. (Tr. 112:2-21)

92. Mr. Barrett, using the undercover name Richard Minor, inquired about investment opportunities in Deluge for accredited investors. (Tr. 113)(Ex. S-14)

[7] This person was Division investigator Santee in his undercover persona of "Billy Matthews."

93. On June 6, 2013, investigator Barrett emailed Respondent Hageman that he was interested in making an investment. (Tr. 113-114:22-3)

94. According to Ms. Weiss, Respondent Hageman responded to the Division's investigator and sent him a copy of a current licensing business plan along with an investment subscription agreement which required a minimum investment of $25,000 for stock in Deluge. (Tr. 114:4-15)(Ex. S-15)

95. Investigator Weiss stated that the subscription agreement which was emailed to investigator Barrett in 2013 indicated that Deluge was incorporated in Delaware, but as noted by investigator Weiss, this was an "inaccurate" representation. (Tr. 115:7-19)

96. The last page of the Deluge subscription agreement sent to Mr. Barrett indicated a price of $1 per share for Deluge stock. (Ex. S-15)

97. According to Ms. Weiss, during Respondent Hageman's EUO, he stated that he found investors through personal contacts and the website. (Tr. 116:11-19)

98. According to Ms. Weiss, during Respondent Hageman's EUO, he maintained that he would only speak about investing with people who were accredited. (Tr. 117:6-16)(Ex. S-16)

99. Ms. Weiss testified that during both of her contacts with Respondent Hageman, or those of Mr. Barrett, Mr. Hageman failed to disclose that Deluge or Hydrotherm were no longer valid corporations in Delaware. (Tr. 118:4-9)

100. Further testifying, Ms. Weiss stated that Respondent Hageman failed to disclose that a number of lawsuits had been filed against himself and his companies, Deluge and Hydrotherm. (Tr. 118:10-12)

101. Ms. Weiss further stated that Respondent Hageman also failed to disclose that there were a number judgments taken against himself and his companies during her undercover communications with him. (Tr. 118:19-24)

102. Respondent Hageman also failed to disclose that none of his shareholders had received any return on their investments when he discussed the offering with Ms. Weiss in their emails. (Tr. 119:9-12)

103. Ms. Weiss stated that during her discussions with Mr. Hageman he failed to disclose

that investor funds were used to pay him first before they were applied for the development of technology and business related expenses. (Tr. 121:15-20)

104. Ms. Weiss did not believe that Respondent Hageman informed investors that he was being paid first with shareholder loans during his EUO. (Tr. 121:21-25)

105. Testifying further, Ms. Weiss stated that she had reviewed a number of lawsuits, some of which resulted in default judgments, against the Respondents. (Ex. S-18 through S-23)

106. Ms. Weiss further testified that she had reviewed a Form D filing made by Deluge with the Commission on October 1, 1997, which concerned a private offering by Deluge, and further found that the Commission had also received a Notice of Termination of the private offering on October 22, 1997. (Tr. 128:6-20)

107. Ms. Weiss testified that the Division had received a certified statement from the United States Securities and Exchange Commission ("SEC") that states that Hydrotherm had not filed any registration statements or for any exemptions with the SEC as of April 2, 2014. (Tr. 129:13-18)

108. Ms. Weiss stated that, based on the Division's investigation, the investors in the Respondents that were contacted by the investigators were not accredited. (Tr. 131:6-10)

109. The Division's investigation revealed a document termed a "Technology Transfer Agreement" that provided for the transfer of Respondent Hageman's technology property rights to Hydrotherm with respect to the technology which could convert solar energy to electrical power. (Ex. S-28)

110. Under the initial terms of the Technology Transfer Agreement, Respondent Hageman was to receive a base salary of $75,000 a year for the duration of his employment. (Ex. S-28)

111. In the second amendment to the Technology Transfer Agreement on June 1, 1998, Respondent Hageman signed individually on behalf of himself and on behalf of Hydrotherm agreeing to pay himself $2,000,000, in place of the $75,000 yearly payment originally set forth in the agreement. (Ex. S-28)

112. Further evidencing Respondent Hageman's compensation was a promissory note which was attached to the second amendment to the Technology Transfer Agreement, whereby Hydrotherm, the "Borrower", agreed to pay Respondent Hageman, the "Holder", $2,000,000 with eight percent

annual interest. (Ex. S-28)

113. Ms. Weiss further testified that during Respondent Hageman's EUO, he testified that he had been taking what he termed were "shareholder loans" from Hydrotherm, but that he had not been paid in full and was taking payments of $10,500 a month, and didn't pay taxes on these payments. However, these loans were not documented on the company's books. (Tr. 137)

114. According to a letter from Hydrotherm signed by its treasurer and sent to GMAC Mortgage, Hydrotherm was paying Mr. Hageman $10,400 a month for the use of Respondent Hageman's patented technology. (Ex. S-33)

115. According to the terms of the Technology Transfer Agreement dated May 1, 2000, Deluge became entitled to use technology owned by Hydrotherm in the field of hydraulic pump technologies. (Ex. S-29)

116. Ms. Weiss understood that the technology had been transferred from Respondent Hageman to Hydrotherm, and subsequently to Deluge. (Tr. 145:4-7)

117. Respondent Hageman had signed the Technology Transfer agreement as the CFO of Hydrotherm. (Ex. S-29)

118. According to the minutes of a Deluge Board of Directors meeting on June 25, 1998, Respondent Hageman had reported a checkbook balance of only $23, but that an investor, John Rhodes, had just invested $24,000. (Ex. S-30)

119. In a letter dated May 4, 2001, obtained by Ms. Weiss from Respondent Hageman, Respondent Hageman, on Deluge stationary, described how the company had been "surviving completely on investment from private stockholders." (Ex. S-31)

120. Ms. Weiss testified that she spoke to a Hydrotherm investor who expected a large return on her investment from the purchase of 13,000 shares of its stock; however, she told Ms. Weiss she and her husband were not accredited investors. (Tr. 149-150:4-4)(Ex. S-34)

121. According to Ms. Weiss, Respondent Hageman testified during his EUO that he would receive funds invested in Hydrotherm first, and then the remaining funds would go to the project. (Tr. 152:6-13)

122. Investigator Weiss further testified that Respondent Hageman indicated during his EUO

that he was still raising money in 2012, and had raised $40,000 to $50,000 that year. (Tr. 152-153)

123. Ms. Weiss stated that none of the investors with Respondents received any return on their investments. (Tr. 165-166:23-3)

**John Rhodes**

124. Mr. John Rhodes, a self-employed physical therapist and acupuncturist, testified that he was an individual investor and became familiar with Deluge, Hydrotherm, and Mr. Hageman in approximately 1998 or 1999. (Tr. 175)

125. Mr. Rhodes stated that a friend of his had spoken to him about the "money making potential" of an investment in the Respondents, and he visited Mr. Hageman's office and subsequently became an investor. (Tr. 176:2-12)

126. According to Mr. Rhodes, Respondent Hageman told him that investing with Respondents would be a great investment. (Tr. 176:11-14)

127. Mr. Rhodes further stated that he was not told when he would see a return on his investment, but after every stockholder meeting there were discussions about a public offering. (Tr. 177:13-19)

128. According to Mr. Rhodes, his investment funds were to be used for producing and testing the equipment, or for its development, but he also assumed that funds could be used for the expense of operating the business. (Tr. 179:8-18)

129. Mr. Rhodes saw the engine being developed by Respondents and compared it to the size of a Volkswagen. (Tr. 179:1-15)

130. Although Mr. Rhodes was aware that there was risk associated with investing in the project, he believed that the company would go public and he would receive a return on his investment within a year or two. (Tr. 179-180:21-7)

131. It was clear from Mr. Rhodes' testimony that he did not understand the nature of his investment with the Respondents. (Tr. 180-181:11-13)

132. According to Mr. Rhodes, he purchased stock in both Deluge and Hydrotherm initially in 2000 and again in 2006. (Tr. 181:19-24)

133. Mr. Rhodes stated that he purchased Deluge stock first, and was able to purchase stock

in Hydrotherm at a 50 percent discount before it was offered to the public. (Tr. 182:1-11)

134. Mr. Rhodes recalled initially investing in Deluge by paying $25,000 for 50,000 shares, and later purchasing 15,000 shares of Hydrotherm. (Tr. 182-184)

135. Mr. Rhodes' stock certificates reflected a purchase on June 1, 2000, for 50,000 shares of Deluge, and in a subsequent purchase on May 8, 2006, an additional 2,000 shares of Deluge. On March 31, 2005, a stock certificate for 15,000 shares of Hydrotherm was issued to Mr. Rhodes. (Ex. S-35)

136. The Deluge investor list varies somewhat from Mr. Rhodes' stock certificates, reflecting an initial investment date of June 24, 1998 for 24,000 shares, and on April 14, 2006, for 10,000 more shares. (Ex. S-24C)

137. The Hydrotherm investor list indicates that Mr. Rhodes invested $10,500 in Hydrotherm on April 20, 2000. (Ex. S-24B)

138. Subsequently, Mr. Rhodes determined that he invested a total of $44,500 with the Respondents. (Tr. 187:13-14)

139. So far as Mr. Rhodes knew, the only income that Deluge had was the money that came from investors. (Tr. 188:20-23)

140. Mr. Rhodes stated that at the time he invested, he knew that Respondents did not have an engine to sell and that as an investor he had hopes for what could be produced and hopefully sold. (Tr. 189:12-18)

141. Mr. Rhodes termed the Respondents' situation, and that of the investors, as a "grass roots situation." (Tr. 189:19-25)

142. According to the minutes of a Deluge Board of Directors meeting on June 25, 1998, when Mr. Rhodes first invested, Deluge had a checkbook balance of $23, and when Mr. Rhodes reviewed the minutes which stated that he had invested his $24,000, he stated that "it looks like I'm the only investor". (Ex. S-30)(Tr. 190:13-22)

143. Mr. Rhodes recalled receiving a letter from Deluge dated March 20, 2008, addressed to shareholders, which described the company's first commercial project "for the delivery of up to five "Natural Energy Engines" and goes on to state Respondent would be paying dividends to its

shareholders as the company grew; however, Mr. Rhodes stated that since 2008 he has not received any dividends. (Tr. 191-192)(Ex. S-38)

144. Mr. Rhodes stated that he did not recall any discussions of any lawsuits being filed against Deluge. (Tr. 193:8-11)

145. Further testifying, Mr. Rhodes stated that prior to making any investments with the Respondents he was not provided with financial statements to review. (Tr. 194:8-10)

146. Mr. Rhodes received a letter from Hydrotherm, dated July 2012, which stated that Hydrotherm was not making any money and was not profitable at the time. The letter also stated that Hydrotherm was not going public. (S-36)

147. Mr. Rhodes stated that he was quite surprised because he believed that by that time Hydrotherm would be publically traded. (Tr. 197:12-14)

148. The Hydrotherm letter did not disclose the number of lawsuits which had been filed against either Hydrotherm or Deluge. (Ex. S-36)

149. Mr. Rhodes stated that he was not going to make any further investments with the Respondents and that he had lost confidence in their performance. (Tr. 198-199:19-6)

150. Mr. Rhodes further stated that he was unaware of any agreement between Hydrotherm and Respondent Hageman with respect to the sale of technology. (Tr. 200:19-25)

151. Mr. Rhodes testified that he had been unaware of the provision in the Technology Transfer Agreement between Respondent Hageman and Hydrotherm that provided for Mr. Hageman to receive a base salary of $75,000. (Tr. 201:24-25)

152. Mr. Rhodes stated that the he was unaware of the second amendment to the Technology Transfer Agreement, dated June 1, 1998, which modified the compensation payable to Respondent Hageman, whereby Hydrotherm agreed to pay Respondent Hageman $2,000,000, with annual interest of eight percent, for the property rights defined in the Technology Transfer Agreement. (Tr. 203)

153. Mr. Rhodes further stated that he would have had concerns with such agreements and would have wanted to know about them prior to making his investment. (Tr. 204)

154. The balance sheet for Hydrotherm at the end of December 2007 does not reveal what Respondent Hageman was being paid. (Ex. S-37)

155. Mr. Rhodes testified that he was unaware from looking at the balance sheet that Respondent Hageman was taking "shareholder loans." (Tr. 206:1-9)

156. Mr. Rhodes further testified that he was not aware that there was no documentation for the repayment of the "shareholder loans." (Tr. 206:10-12)

157. Subsequently, Mr. Rhodes acknowledged that his investments with Respondents were made prior to the existence of any shareholder loans. (Tr. 207:14-23)

158. However, Mr. Rhodes stated that before investing any additional funds he would have wanted to know about the Technology Transfer Agreement and the so-called "shareholder loans." (Tr. 208:2-10)

159. Mr. Rhodes further stated that he had no prior relationship with Mr. Hageman before making his first investment with Respondents. (Tr. 218:10-17)

160. Pursuant to the terms of the Subscription Agreement signed by Mr. Rhodes when investing in Deluge in June 1998, it is stated that the investment involved a high degree of risk and that an investor should not invest unless they could afford to lose their entire investment. (Ex. R-1)

**Mr. Sean Callahan**

161. Mr. Sean Callahan, a Certified Public Accountant who was formerly employed as a forensic accountant by the Division, reviewed the financial records of Deluge and Hydrotherm, and also schedules which list all of the investors that were provided by Respondent Hageman. (Tr. 222:1-6)

162. Based on Mr. Callahan's educational background and certifications, he was designated as an expert witness.

163. Mr. Callahan stated that, originally, with respect to Deluge and Hydrotherm, he worked to compile an investor list, in some instances by utilizing the information provided by Respondent Hageman, who listed investors that received shares of stock as compensation for services or products or other items of a like nature. Apparently, some of these investors had not paid for their investments and there was no basis for their investments. (Tr. 223-226)

164. According to Mr. Callahan, some individual investors received shares of stock on repeated occasions, either as payment or for performing some sort of "additional work." (Tr. 227-

228:20-3)

165. Mr. Callahan, using the documentation provided by Respondents, prepared three schedules which comprise Exhibits S-24a, S-24b, and S-24c. Exhibit S24a reflected only investments with Mr. Hageman of $79,500; Exhibit S-24b represented Hydrotherm investors with investments of $3,969,577.87, with no repayments; and Exhibit S-24c represented Deluge investors with investments of $7,194,677.02, with no repayments. (Tr. 229)

166. It was disclosed by Respondent Hageman that the majority of the monies reflected on Exhibit S-24a ($79,500) were advances from his father, Thomas Hageman, and that only two investments were made investors by name of the Klimchock, totaling $14,500. Additionally, two other investors with Mr. Hageman appeared to invest only $500.00

167. Besides these two investments, a review of Exhibit S-24b, with respect Hydrotherm, reveals a number of investments which were made by the Klimchocks on various dates totaling at least $31,000.

168. Mr. Callahan stated that he was familiar with shareholder loans and accounting practices related to such loans. He stated that when disbursements were made to owners, officers, directors or the like from their companies, the advance should be documented with some form of note describing how and when the loans were to be repaid. (Tr. 237-238)

169. Further testifying, Mr. Callahan stated that these transactions with shareholders should have been recorded on the books and records of the Respondents. (Tr. 238:15-17)

170. Mr. Callahan stated that with respect to various shareholder loans involving Respondent Hageman, there was no documentation in the financial records which were provided for him to review. (Tr. 239-240)

171. According to Mr. Callahan, Respondents should have maintained an account ledger which set forth the details of any shareholder loans and the manner in which they were to be repaid. (Tr. 240-241)

172. Mr. Callahan stated that he had reviewed the second amendment to the Technology Transfer Agreement, which provided that in lieu of compensation Respondent Hageman was to receive $2,000,000 for the property rights described in the Technology Agreement; however, he did not find

any documentation which would support the $2,000,000 valuation. (Tr. 241:20-23)

173. Mr. Callahan further testified that, in order to value something similar to technology he would retain a third party who was an expert to provide the valuation assigned to the property rights that were transferred. (Tr. 241-242:24-9)

174. Mr. Callahan emphasized that an independent third party valuation of the technology provided to Hydrotherm was of key importance in such a transaction. (Tr. 242:10-25)

175. Mr. Callahan stated that a memo from Respondent Hageman addressed to an individual at an accounting firm, Arthur Andersen, supported his (Mr. Callahan's) position with respect to the fact that another accountant at another accounting firm had stated that there was no way to establish the valuation of the technology that was transferred to Hydrotherm. (Ex. S-32)

176. According to Mr. Callahan, Hydrotherm's balance sheet would normally reflect monies owed to it by Respondent Hageman as a receivable if Hydrotherm gave the money to Respondent Hageman. Mr. Callahan further stated that with respect to Deluge, the so-called shareholder loans would be reflected as a receivable from Respondent Hageman, but he did not see any shareholder information on the balance sheet, which would make the financial statement for Deluge incorrect and distort the statement rendering it worthless and not usable. (Tr. 247-248)

177. Mr. Callahan further stated that when auditing firms are changed, a "red flag" is raised because it illustrates that there was some sort of dispute between the auditing firm and the client causing a disengagement and no report being issued. (Tr. 249)

178. Mr. Callahan further stated that he did not see any audited financial statements or auditors' reports related to either Deluge or Hydrotherm, and did not see any evidence of repayment by Respondent Hageman for the so-called "shareholder loans" in the documents which he was provided. (Tr. 251:1-7)

179. After the Division concluded its presentation of its evidence, Respondent Hageman declined to present any testimony either by himself or from any witnesses.

180. Under the circumstances herein, after our review of the entire record in this matter, and reviewing the applicable law, we conclude that multiple violations of the Act occurred through the actions of Respondent Hageman, Deluge and Hydrotherm through the offering and selling of securities

in the form of stock in a fraudulent manner. The Division has established these facts by a preponderance of the evidence, which was not rebutted by Respondents, that these violations occurred. With no rebuttal evidence, Respondents should be held liable for their violations of the Act and they should make restitution and pay an administrative penalty.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, et seq.

2. The investment offerings as described herein and sold by Respondents Hageman, Deluge, and Hydrotherm constituted securities within the meaning of A.R.S. § 44-1801.

3. Respondents Hageman, Deluge, and Hydrotherm acted as a dealers and/or a salesman within the meaning of A.R.S. § 44-1801(9) and (22).

4. The actions and conduct of Respondents Hageman, Deluge, and Hydrotherm constitute the offer and sale of securities within the meaning of A.R.S. § 44-1801(21).

5. The securities were neither registered nor exempt from registration in violation of A.R.S. § 44-1841.

6. Respondents Hageman, Deluge, and Hydrotherm offered and sold unregistered securities in Arizona in violation of A.R.S. § 44-1841.

7. Respondents Hageman, Deluge, and Hydrotherm offered and sold securities in Arizona without being registered as a dealer and/or salesman in violation of A.R.S. § 44-1842.

8. Respondents Hageman, Deluge, and Hydrotherm failed to meet their burden of proof pursuant to A.R.S. § 40-2033 to establish that the securities offered and sold herein were exempt from regulation under the Act.

9. Respondents Hageman, Deluge, and Hydrotherm committed fraud in the offer and sale of unregistered securities, engaging in transactions, practices or a course of business which involved untrue statements and omissions of material facts in violation of A.R.S. § 44-1991.

10. Respondents Hageman, Deluge, and Hydrotherm have violated the Act and should cease and desist pursuant to A.R.S. § 44-2032 and from any future violations of A.R.S. §§ 44-1841, 44-1842, 44-1991 and all other provisions of the Act.

11. The actions and conduct of Respondents Hageman, Deluge, and Hydrotherm constitute multiple violations of the Act and are grounds for an order of restitution pursuant to A.R.S. § 44-2032 and for an order assessing administrative penalties pursuant to A.R.S. § 44-2036.

**ORDER**

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Brian C. Hageman, Deluge, Inc., and Hydrotherm Power Corporation shall cease and desist from their actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842, and 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Brian C. Hageman, Deluge, Inc., and Hydrotherm Power Corporation, jointly and severally, shall make restitution in the amount of $11,179,254.89, payable to the Arizona Corporation Commission within 90 days of the effective date of this decision. Such restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal-setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that all restitution payments as ordered hereinabove shall be deposited into an interest-bearing account(s), if appropriate, until distributions are made.

IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the rate of the lesser of 10 percent *per annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or any publication that may supersede on the date that the judgment is entered.

IT IS FURTHER ORDERED that the Commission shall disburse the funds on a *pro rata* basis to the investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because an investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of distribution, shall be disbursed on a *pro rata* basis to the remaining investors shown on the records of the Commission. Any funds that the Commission determines that it is unable to or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED that Respondents Brian C. Hageman, Deluge, Inc., and Hydrotherm Power Corporation, jointly and severally, shall pay to the State of Arizona administrative penalties for the violation of A.R.S. § 44-1841 the sum of $15,000; for the violation of A.R.S. § 44-1842 the sum of $15,000; and for the violation of A.R.S. § 44-1991 the sum of $25,000, pursuant to A.R.S. § 44-2036. Said administrative penalties shall be payable by either cashier's check or money order payable to the "State of Arizona" and presented to the Arizona Corporation Commission for deposit in the General Fund for the State of Arizona.

IT IS FURTHER ORDERED that the payment obligations for these administrative penalties shall be subordinate to the restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondents' default with respect Respondents' restitution obligations.

IT IS FURTHER ORDERED that if Respondents Brian C. Hageman, Deluge, Inc., and Hydrotherm Power Corporation fail to pay the administrative penalties ordered hereinabove, any outstanding balance plus interest at the rate of the lesser of 10 percent *per annum* or the rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15 or any publication that may supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately due and payable, without further notice.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any outstanding balance shall be in default and shall be immediately due and payable without further notice or demand. The acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

It IS FURTHER ORDERED that default shall render Respondents liable to the Commission for its cost of collection and interest at the maximum legal rate.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the Commission may bring further legal proceedings against Respondent(s) including application to the Superior Court for an order of contempt.

. . .

IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application, the Commission may grant rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Order, and, unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant rehearing within twenty (20) calendar days of the filing of the application, the application is considered to be denied. No additional notices will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN LITTLE COMMISSIONER STUMP

COMMISSIONER FORESE COMMISSIONER TOBIN COMMISSIONER BURNS

IN WITNESS WHEREOF, I, JODI A. JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____day of _____ 2016.

JODI A. JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
MS:rt

SERVICE LIST FOR: BRIAN C. HAGEMAN, DELUGE INC., AND HYDROTHERM POWER CORPORATION

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